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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

JIM BROWN, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BRETT C. BREWER, et al.,

Defendants.

No. 2:06-cv-03731-GHK-SH

CLASS ACTION

OPPOSITION TO MOTION TO  
INTERVENE

DATE: February 27, 2012

TIME: 9:30 a.m.

CTRM: The Honorable  
George H. King

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1 Plaintiff Jim Brown respectfully submits this Opposition to the Motion to  
2 Intervene filed by purported Class Member James A. Nelson. For the following  
3 reasons the motion should be denied in its entirety.

4 **I. INTRODUCTION**

5 As previously set forth in the Memorandum in Support of Joint Motion to  
6 Continue the hearing on this motion, the motion to intervene was filed by James A.  
7 Nelson, but it was almost certainly prepared by Brad Greenspan, who, although  
8 previously dismissed as a Class Member, nevertheless continues to try to find a way to  
9 get back in the case. The motion is virtually identical to the motion to intervene filed  
10 by Mr. Greenspan several months ago, which motion was stricken by the Court. As  
11 the clock strikes midnight on this case, this motion seeks to restart the clock on a  
12 litigation which has already been pending for many years. But even were Mr.  
13 Greenspan not involved in this filing, the motion should be denied because it is  
14 untimely, and because it fails to meet the requirements for intervention under Rule 24,  
15 either of right or permissively. Moreover, should the Court interpret the motion as an  
16 objection to the Settlement, it should be denied for failing to meet the requirements for  
17 filing objections as detailed in the Revised Notice, *i.e.*, it does not address the Plan of  
18 Allocation, but rather seems to address the Settlement itself.

19 **II. ARGUMENT**

20 **A. Mr. Nelson's Motion to Intervene Is Not Timely**

21 Rule 24 of the Federal Rules of Civil Procedure provides for two types of  
22 intervention. Under Rule 24(a)(2), intervention shall be permitted when the applicant  
23 claims an interest which "may as a practical matter impair or impede the movant's  
24 ability to protect its interest, unless existing parties adequately represent that interest."  
25 Under Rule 24(b)(1)(B), intervention may be allowed in the Court's discretion when  
26 the applicant "has a claim or defense that shares with the main action a common  
27 question of law or fact," and allowing intervention will not unduly delay or prejudice  
28 the adjudication of the rights of the original parties. *See also Cohorst v. BRE Props.,*

1 *Inc.*, No. 10cv2666 JM(BGS), 2011 U.S. Dist. LEXIS 87263, at \*10-\*11 (S.D. Cal.  
2 Aug. 5, 2011). Most importantly, however, “[a]n application to intervene, whether as  
3 of right or permissive, must be timely.” *Id.* at \*11. In determining whether a motion  
4 for intervention is timely, the court considers three factors: ““(1) the stage of the  
5 proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties;  
6 and (3) the reason for and length of the delay.”” *Id.* at \*11-\*12 (citations omitted).  
7 Most critically, “[a]ny substantial lapse of time weights heavily against  
8 intervention.”” *Id.* at \*12 (citation omitted). Mr. Nelson has provided absolutely no  
9 evidence that he acted ““as soon as he [knew] or [had] reason to know that his  
10 interests might be adversely affected by the outcome of the litigation.”” *Id.* (citation  
11 and emphasis omitted). In fact, the truth is quite to the contrary.

12 Notice of the pendency of this case was first provided to Mr. Nelson in  
13 November 2009. He also received the notice of settlement in early 2011. It was not  
14 until January 2012, nearly a full year later, that Mr. Nelson filed this motion to  
15 intervene, ostensibly because he now believes that the Settlement is somehow  
16 deficient or Mr. Brown or Plaintiff’s Counsel have not adequately represented the  
17 Class. The Settlement has been pending for over a year, and this is the first anyone  
18 has heard from Mr. Nelson. As such, the Court should deny the motion as untimely.

19 **B. Mr. Nelson Should Not Be Permitted to Intervene as of**  
20 **Right**

21 Even if the Court determines that the motion to intervene was timely made, the  
22 Court should deny Mr. Nelson’s request to intervene as of right under Rule 24(a). Mr.  
23 Nelson could have, but did not, file an objection to this Settlement. He cannot use his  
24 failure to object to backdoor his efforts to derail this Settlement. *See Cohorst v. BRE*  
25 *Props., Inc.*, No. 3:10-CV-2666-JM-BGS, 2011 U.S. Dist. LEXIS 87342, at \*12 (S.D.  
26 Cal. July 19, 2011) (“Other lower courts since *Devlin [v. Scardelletti]*, 536 U.S. 1, 122  
27 S. Ct. 2005, 153 L. Ed. 2d 27 (2002)] was decided in 2002 have recognized that where  
28 the right to object to the settlement at the Fairness hearing or to opt out of the

1 settlement exists, intervention is simply unnecessary to protect a putative class  
2 member's interests.”).<sup>1</sup> Mr. Nelson likewise failed to establish that his rights to raise  
3 issues concerning the fairness of the Settlement or the representation of the Class by  
4 Jim Brown were not adequately protected by the objection process. *Id.* at \*13. *See*  
5 *also Lane v. Facebook, Inc.*, No. C 08-3845 RS, 2009 U.S. Dist. LEXIS 103668, at  
6 \*4, \*20 (N.D. Cal. Oct. 23, 2009).

7 Because Mr. Nelson could have objected to the adequacy of the Settlement or  
8 Jim Brown's or counsel's representation of the Class, but did not do so, permitting  
9 him to intervene in this action at this late date would unnecessarily disrupt and further  
10 delay these proceedings. Therefore, Mr. Nelson's motion to intervene as of right  
11 should be denied.

12 **C. Mr. Nelson Should Not Be Permitted to Permissively**  
13 **Intervene**

14 The Court should likewise deny Mr. Nelson's motion for permissive  
15 intervention. He has not provided sufficient evidence that he possesses “(1) an  
16 independent ground for jurisdiction; (2) a timely motion; and (3) a common question  
17 of law and fact between the movant's claim or defense and the main action.”  
18 *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992).

19 When exercising its discretion under the permissive intervention rule, the Court  
20 is required to consider “whether the intervention will unduly delay or prejudice the  
21 adjudication of the original parties' rights.” *See* Fed. R. Civ. P. 24(b)(3). Permitting  
22 Mr. Nelson, as stalking horse for Mr. Greenspan, to intervene at this late date so he  
23 can attempt to inject these proceedings with immaterial and irrelevant arguments will  
24 certainly delay distribution of the Net Settlement Fund to the Class. Moreover,  
25 because Mr. Greenspan has interests and an agenda which do not match those of the

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26 <sup>1</sup> If the Court considers this motion as an objection to the Settlement, it should  
27 likewise be overruled, as the Revised Notice is quite clear that the Court will only  
28 consider objections to the Plan of Allocation at the March 19, 2012 hearing.

1 Class, this motion to intervene permissively so that he can pursue this agenda should  
2 be denied.

3 **D. The Court Should Strike Any “Evidence” Submitted in**  
4 **Support of the Motion**

5 Mr. Nelson’s brief is replete with ramblings and other materials that have been  
6 previously stricken by the Court when they were submitted by Mr. Greenspan. The  
7 Court should likewise strike these materials as filed by Mr. Nelson. They are simply  
8 irrelevant to the motion to intervene, or to this belated “objection” to the Settlement,  
9 and are a backdoor attempt to have the Court consider materials it has already  
10 stricken.

11 **III. CONCLUSION**

12 The Court should deny the motion to intervene filed by James A. Nelson. Not  
13 only is the motion untimely, but there is absolutely no reason to find that the  
14 Settlement is anything other than an excellent result for the Class under the  
15 circumstances, or that Jim Brown and Plaintiff’s Counsel have not adequately  
16 represented the Class, or that Mr. Nelson would better represent the interests of the  
17 Class.

18 DATED: February 13, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2012, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 13, 2012.

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